

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO CATTLE GROWERS )  
ASSOCIATION, *et al.*, )  
 )  
Petitioners, )  
v. )  
 )  
U.S. FOREST SERVICE, *et al.*, )  
 )  
Federal Respondents, )  
 )  
CENTER FOR BIOLOGICAL )  
DIVERSITY, )  
 )  
Movant-Intervenor. )  
\_\_\_\_\_ )

Case No. 1:23-cv-00150-JB-GBW

**JOINT MOTION FOR SCHEDULE FOR ADMINISTRATIVE RECORD**  
**PRODUCTION AND BRIEFING ON THE MERITS**

The Parties, by and through undersigned counsel of record, hereby respectfully request that the Court set a schedule for Federal Respondents to produce the Administrative Record(s) for this matter, and for the Parties to brief this case on the merits. Petitioners filed their “Complaint for Declaratory and Injunctive Relief,” ECF No. 1, on February 21, 2023. Federal Respondents’ Response to the Complaint is due on or about May 23, 2023. Movant-Intervenor Center for Biological Diversity filed its “Motion to Intervene,” ECF No. 26, on February 28, 2023, which is fully briefed and scheduled for a hearing on April 27, 2023, ECF No. 32.

In their Complaint, Petitioners allege that the United States Forest Service and the Animal and Plant Health Inspection Service (through their respective Officers, the named Federal Respondents) have violated or exceeded various provisions of law, including the

National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq., and Forest Service regulations in authorizing and approving the aerial shooting of “as many as 150 ‘unauthorized’ cattle in the Gila National Forest” in the Gila Wilderness. ECF No. 1 ¶¶ 1-5, 76-113. Petitioners allege that they bring their claims “predominantly” under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706 and NEPA, 42 U.S.C. §§ 4321-4370h. *Id.* ¶ 21.

In *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560 (10th Cir. 1994), the Tenth Circuit held that challenges to federal agency actions pursuant to the judicial review provisions of the APA “must be processed as appeals” by reference to the Federal Rules of Appellate Procedure. 42 F.3d at 1580. Under this posture, subject to any motions to dismiss, the ordinary procedure for matters reviewed under the APA in this District is for Federal Respondents to produce the Administrative Record(s) for the challenged agency actions and for the Parties to brief the case on the merits, as they would an appeal. *See, e.g., WildEarth Guardians v. U.S. Forest Serv.*, 668 F. Supp. 2d 1314, 1323 (D.N.M. 2009). APA cases do not require initial disclosures, involve other pre-trial procedures, or, for that matter, a trial, and typically do not involve discovery. *See, e.g., Fed. R. Civ. P. 26(a)(1)(B)(i).*

Based on these considerations, the Parties have conferred and propose the following schedule for resolution of this case on the merits:

Federal Respondents to serve a provisional draft copy of the Administrative Record(s) to all Parties, in pdf format through a web link

May 25, 2023

Deadline for Petitioners to confer with Federal Respondents regarding any disputes concerning the content and sufficiency of the Administrative Record(s)

June 30, 2023

Deadline for Federal Respondents to lodge the  
Administrative Record(s) with the Court in pdf  
format on USB drives

July 14, 2023

Deadline for any Motions to Complete or Supplement  
the Administrative Record(s)

July 31, 2023

If any motions to complete or supplement the Administrative Record(s) are filed, it will have the effect of staying the schedule for merits briefing set forth below until the Court resolves the motions. Any disputes not raised by motion by this deadline regarding the scope or content of the Administrative Record(s) will be deemed to have been waived.

If no motions to complete or supplement the Administrative Record(s) are filed, the Parties propose the following schedule for merits briefing:

Petitioners' Opening Brief

August 31, 2023

Federal Respondents' Response Brief

October 12, 2023

Petitioners' Reply Brief

November 2, 2023

If motions to complete or supplement the Administrative Record(s) are filed, and the Court finds that the Administrative Record(s) require amendment, Federal Respondents will have 30 days from the date of the Court's ruling on all motions to lodge the final Administrative Record(s) in pdf format on USB drives. The briefing schedule immediately following is counted from the date of lodging the Administrative Record(s), or if the Court denies the motions on the Administrative Record(s), from the date of the Court's order resolving the motions. Subsequent deadlines build thereon.

Petitioners' Opening Brief

30 Days

Federal Respondents' Response Brief

Add 30 Days

Petitioners' Reply Brief

Add 21 Days

Any claims or defenses not raised in the opening or response briefs will be deemed to have been waived. In accordance with *Olenhouse*, the length of the Parties' briefs on the merits will be consistent with the Federal Rules of Appellate Procedure. The Parties have conferred with Movant-Intervenor, which agrees with the proposed schedule and terms. If the Motion to Intervene is granted, the Parties will submit proposed modifications to the briefing schedule to include Movant-Intervenor in the schedule.

The Parties respectfully request the Court adopt this schedule in lieu of the scheduling and discovery requirements set forth in the Court's March 16, 2023 "Initial Scheduling Order," ECF No. 33.

Dated: April [XX], 2023.

Respectfully Submitted,

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